

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket № 14967US02

In the Application of:

Jeyhan Karaoguz, et al.

Serial No.: 10/667,036

Filed: September 22, 2003

For: BILLING SUPPORT IN A
MEDIA EXCHANGE NETWORK

Examiner: HAMILTON, LALITA

Group Art Unit: 3691

Conf. No.: 7866

Electronically Filed on May 7, 2009

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicants respectfully request that the Board of Patent Appeals and Interferences reverse the final rejection of claims 1-53 of the present application. This Appeal Brief is timely because it is being filed within 2 months of the May 4, 2009 filing date of the Notice of Appeal.

REAL PARTY IN INTEREST
(37 C.F.R. § 41.37(c)(1)(i))

The real party in interest is Broadcom Corporation, having a place of business at 16215 Alton Parkway, Irvine, California.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(ii))

Not applicable.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

The present application includes claims 1-53, all of which stand rejected.¹ The Applicants identify claims 1-53 as the claims that are being appealed. The text of the claims involved in this Appeal, namely, claims 1-53, is provided in the Claims Appendix.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

Claims 1-53 were finally rejected.² Accordingly, the Applicants filed a Notice of Appeal³ and submit this Appeal Brief.

¹ See February 4, 2009 Final Office Action.

² See *id.*

SUMMARY OF CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))

Independent claim 1 recites the following:

A system providing billing support for the exchange of media,⁴ the system comprising:

a first television display⁵ in a first home⁶ of a first user;⁷

a first storage in the first home,⁸ the first storage supporting media consumption by the first television display in the first home,⁹ and having a first network protocol address;¹⁰

a user interface¹¹ for the selection and display of media content,¹² at the first home, the user interface allowing at least one user to create at least one user defined media channel,¹³ wherein the at least one user selects media content for the at least one user defined media channel through the user interface¹⁴, and the at least one user

³ See May 4, 2009 Notice of Appeal.

⁴ See present application, e.g., at page 4, lines 2-3.

⁵ See *id.*, e.g., at page 17, lines 4-7, Figure 6, ref. 608.

⁶ See *id.*, e.g., at Figure 1, ref. 104, Figure 3, ref. 303, Figure 4, ref. 403.

⁷ See *id.*, e.g., at page 4, lines 3-4.

⁸ See *id.*, e.g., at page 4, lines 4-5.

⁹ See *id.*, e.g., at page 4, lines 5-6.

¹⁰ See *id.*, e.g., at page 4, lines 6-7.

¹¹ See *id.*, e.g., at page 4, lines 7-8, page 17, lines 18-19, Figure 4, ref. 407, Figure 6, ref. 600, Figure 7, ref. 700, Figure 8, ref. 800.

¹² See *id.*, e.g., at page 19, lines 6-9.

¹³ See *id.*, e.g., at page 4, lines 7-8, page 27, lines 1-6, page 28, lines 10-13, page 30, lines 16-21, Figure 4, refs. 408, 410 and 411.

¹⁴ See *id.*, e.g., at page 4, lines 9-11.

specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation¹⁵ of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user,¹⁶ wherein the at least one user defined media channel is pushed¹⁷ from the first home to other authorized¹⁸ users at locations¹⁹ that are separate and distinct from the first home;

at least one server²⁰ storing the media content,²¹ and having a second network protocol address;²² and

server software²³ that receives from the first home via a communication network a request for the delivery of media content,²⁴ the request comprising information securing payment for delivery,²⁵ and that responds by coordinating the delivery of the media content from the at least one server at the second network protocol address to

¹⁵ See *id.*, e.g., at Figure 6, ref. 600.

¹⁶ See *id.*, e.g., at page 33, lines 8-19.

¹⁷ See *id.*, e.g., at page 27, lines 1-6, page 28, lines 10-13, page 31, lines 1-8, page 33, line 20 to page 34, line 3.

¹⁸ See *id.*, e.g., at page 28, lines 10-18.

¹⁹ See *id.*, e.g., at Figure 1, refs. 108 and 112, Figure 3, refs. 308 and 310, Figure 31, refs. 409 and 412.

²⁰ See *id.*, e.g., at page 29, lines 11-17.

²¹ See *id.*, e.g., at page 4, lines 11-12.

²² See *id.*, e.g., at page 4, lines 11-13.

²³ See *id.*, e.g., at page 17, lines 14-19.

²⁴ See *id.*, e.g., at page 4, lines 13-15.

²⁵ See *id.*, e.g., at page 4, lines 15-16.

the first storage at the first network protocol address for consumption by the first television display.²⁶

Independent claim 12 recites the following:

A system providing billing support for the exchange of media,²⁷ the system comprising:

a first storage²⁸ in the first home,²⁹ the first storage supporting media consumption, and having an associated first protocol address;³⁰

a second television display in a second home,³¹ and having an associated second protocol address;³²

a user interface³³ for the selection and display of media content,³⁴ at the first home, the user interface allowing at least one user to create at least one user defined media channel,³⁵ wherein the at least one user selects media content for the at least

²⁶ See *id.*, e.g., at page 4, lines 16-19.

²⁷ See *id.*, e.g., at page 4, lines 2-3.

²⁸ See *id.*, e.g., at page 4, lines 4-5.

²⁹ See *id.*, e.g., at Figure 1, ref. 104, Figure 3, ref. 303, Figure 4, ref. 403.

³⁰ See *id.*, e.g., at page 4, lines 6-7.

³¹ See *id.*, e.g., at page 6, lines 9-10, Figure 1, refs. 108 and 112, Figure 3, refs. 308 and 310, Figure 31, refs. 409 and 412.

³² See *id.*, e.g., at page 6, lines 9-10.

³³ See *id.*, e.g., at page 4, lines 7-8, page 17, lines 18-19, Figure 4, ref. 407, Figure 6, ref. 600, Figure 7, ref. 700, Figure 8, ref. 800.

³⁴ See *id.*, e.g., at page 4, lines 11-12.

³⁵ See *id.*, e.g., at page 4, lines 7-8, page 27, lines 1-6, page 28, lines 10-13, page 30, lines 16-21, Figure 4, refs. 408, 410 and 411.

one user defined media channel through the user interface,³⁶ and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation³⁷ of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user,³⁸ wherein the at least one user defined media channel is pushed³⁹ from the first home to the second home;

at least one server⁴⁰ storing the media content;⁴¹ and

server software⁴² that receives from the first home at the associated first protocol address, via a communication network, a request for the delivery of the media content,⁴³ the request comprising information securing payment for delivery,⁴⁴ and that responds by coordinating the delivery of the media content from one or both of the first

³⁶ See *id.*, e.g., at page 4, lines 9-11.

³⁷ See *id.*, e.g., at Figure 6, ref. 600.

³⁸ See *id.*, e.g., at page 33, lines 8-19.

³⁹ See *id.*, e.g., at page 27, lines 1-6, page 28, lines 10-13, page 31, lines 1-8, page 33, line 20 to page 34, line 3.

⁴⁰ See *id.*, e.g., at page 29, lines 11-17.

⁴¹ See *id.*, e.g., at page 4, lines 11-12.

⁴² See *id.*, e.g., at page 17, lines 14-19.

⁴³ See *id.*, e.g., at page 4, lines 13-15.

⁴⁴ See *id.*, e.g., at page 4, lines 15-16.

storage and/or the at least one server to the second television display at the associated second protocol address for consumption.⁴⁵

Independent claim 23 recites the following:

A system providing billing support for the exchange of media,⁴⁶ the system comprising:

a first storage⁴⁷ in the first home;⁴⁸

a second television display in a second home;⁴⁹

a user interface⁵⁰ for the selection and display of media content,⁵¹ the user interface allowing at least one user to create at least one user defined media channel,⁵² wherein the at least one user selects media content for the at least one user defined media channel through the user interface,⁵³ and the at least one user specifies, through the user interface, times when the user selected media content will be made available via the at least one user defined media channel, the user interface displaying a

⁴⁵ See *id.*, e.g., at page 4, lines 16-19.

⁴⁶ See *id.*, e.g., at page 4, lines 2-3.

⁴⁷ See *id.*, e.g., at page 4, lines 4-5.

⁴⁸ See *id.*, e.g., at Figure 1, ref. 104, Figure 3, ref. 303, Figure 4, ref. 403.

⁴⁹ See *id.*, e.g., at page 6, lines 9-10, Figure 1, refs. 108 and 112, Figure 3, refs. 308 and 310, Figure 31, refs. 409 and 412.

⁵⁰ See *id.*, e.g., at page 4, lines 7-8, page 17, lines 18-19, Figure 4, ref. 407, Figure 6, ref. 600, Figure 7, ref. 700, Figure 8, ref. 800.

⁵¹ See *id.*, e.g., at page 4, lines 11-12.

⁵² See *id.*, e.g., at page 4, lines 7-8, page 27, lines 1-6, page 28, lines 10-13, page 30, lines 16-21, Figure 4, refs. 408, 410 and 411

⁵³ See *id.*, e.g., at page 4, lines 9-11.

graphical representation⁵⁴ of the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user,⁵⁵ wherein the at least one user defined media channel is pushed⁵⁶ from the first home to the second home;

at least one server storing the media content;⁵⁷ and

server software that receives a request for the delivery of the media content,⁵⁸ the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from one of the first storage and the at least one server to the second television display for consumption.⁵⁹

Independent claim 29 recites the following:

One or more circuits for use in a communication terminal at a first location in a media exchange network, the one or more circuits comprising:

at least one interface⁶⁰ for communicating via a broadband communication infrastructure;⁶¹

⁵⁴ See *id.*, e.g., at Figure 6, ref. 600.

⁵⁵ See *id.*, e.g., at page 6, lines 11-15.

⁵⁶ See *id.*, e.g., at page 27, lines 1-6, page 28, lines 10-13, page 31, lines 1-8, page 33, line 20 to page 34, line 3.

⁵⁷ See *id.*, e.g., at page 6, lines 16-17.

⁵⁸ See *id.*, e.g., at page 6, lines 17-19.

⁵⁹ See *id.*, e.g., at page 6, line 19 to page 7, line 2.

⁶⁰ See *id.*, e.g., at page 4, lines 7-8, page 17, lines 18-19, Figure 4, ref. 407, Figure 6, ref. 600, Figure 7, ref. 700, Figure 8, ref. 800.

at least one processor⁶² operably coupled to the at least one interface and to storage⁶³ containing executable code enabling creation by a first user at the first location⁶⁴ of one or more media channels⁶⁵ for distribution to an authorized⁶⁶ second user at a second location remote from the first location,⁶⁷ wherein the one or more media channels comprises media content selected by the first user and arranged according to times specified by the first user;⁶⁸ and

wherein each of the one or more media channels comprises a sequence of media content selected by the first user,⁶⁹ which is made available for consumption by the second user of the media exchange network at times scheduled by the first user,⁷⁰ wherein the one or more media channels are pushed⁷¹ by the first user at the first location to the second user at the second location.

⁶¹ See *id.*, e.g., at page 7, lines 12-15.

⁶² See *id.*, e.g., at page 18, lines 3-8.

⁶³ See *id.*, e.g., at page 4, lines 4-5.

⁶⁴ See *id.*, e.g., at Figure 1, ref. 104, Figure 3, ref. 303, Figure 4, ref. 403.

⁶⁵ See *id.*, e.g., at page 4, lines 7-8, page 27, lines 1-6, page 28, lines 10-13, page 30, lines 16-21, Figure 4, refs. 408, 410 and 411.

⁶⁶ See *id.*, e.g., at page 28, lines 10-18.

⁶⁷ See *id.*, e.g., at Figure 1, refs. 108 and 112, Figure 3, refs. 308 and 310, Figure 31, refs. 409 and 412.

⁶⁸ See *id.*, e.g., at Figure 6, ref. 600.

⁶⁹ See *id.*, e.g., at page 33, lines 8-19.

⁷⁰ See *id.*, e.g., at page 33, lines 8-19.

⁷¹ See *id.*, e.g., at page 27, lines 1-6, page 28, lines 10-13, page 31, lines 1-8, page 33, line 20 to page 34, line 3.

Independent claim 40 recites the following:

A system comprising:

a user interface⁷² for the selection and display of media content,⁷³ the user interface allowing at least one user to create at least one user defined media channel,⁷⁴ wherein the at least one user selects media content for the at least one user defined media channel through the user interface,⁷⁵ and the at least one user specifies, through the user interface, times when the user selected media content will be made available via the at least one user defined media channel, the user interface displaying a graphical representation⁷⁶ of the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user.⁷⁷

⁷² See *id.*, e.g., at page 4, lines 7-8, page 17, lines 18-19, Figure 4, ref. 407, Figure 6, ref. 600, Figure 7, ref. 700, Figure 8, ref. 800.

⁷³ See *id.*, e.g., at page 4, lines 11-12.

⁷⁴ See *id.*, e.g., at page 4, lines 7-8, page 27, lines 1-6, page 28, lines 10-13, page 30, lines 16-21, Figure 4, refs. 408, 410 and 411.

⁷⁵ See *id.*, e.g., at page 4, lines 9-11.

⁷⁶ See *id.*, e.g., at Figure 6, ref. 600.

⁷⁷ See *id.*, e.g., at page 6, lines 11-15.

Independent claim 46 recites the following:

A system comprising:

at least one server at a first location, the at least one server configured to store media content;⁷⁸ and

server software that receives via a communication network a request for the delivery of the media content from the at least one server at the first location,⁷⁹ the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from the at least one server at the first location to a storage at a second location to a television display at a third location for consumption.⁸⁰

⁷⁸ See *id.*, e.g., at page 6, lines 16-17.

⁷⁹ See *id.*, e.g., at page 6, lines 17-19.

⁸⁰ See *id.*, e.g., at page 6, line 19 to page 7, line 2.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(c)(1)(vi))**

- Claims 1-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,388,714 ("Schein") in view of "The Future of TV."

**ARGUMENT
(37 C.F.R. § 41.37(c)(1)(vii))**

Claims 1-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schein in view of The Future of TV. As noted in the Manual of Patent Examining Procedure, "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." See MPEP at 2143.03. Further, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA)." See *id.*

In rejecting all of claims 1-53 of the present application, the Final Office Action summarily states the following:

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein (6,388,714) in view of Future TV (November 2001).

Schein discloses the invention substantially as claimed, as set forth in the previous Office Action. Schein does not specifically disclose customizing content or wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home. Future TV teaches that customization of tv content whereby users will be able to share information and customize all entertainment options (p. 4, col. 2-3). It would have been obvious to one having ordinary skill in the art at

the time the invention was made to incorporate the teachings of Future TV within Schein for the motivation of allowing users to eventually utilize the system in customizing and sharing programming.

See February 4, 2009 Office Action at page 2-3 (emphasis added). As shown above, the Office Action relies on The Future of TV for elements that were not in existence at the time the article was written (hence the use of future tense, emphasized above). Indeed, the name of the article itself, The **Future** of TV, acknowledges that it does not deal with technology as it existed at the time the article was written. As explained in Section VII of this Appeal Brief, The Future of TV does not provide an enabling disclosure and therefore cannot be combined with Schein to reject any of the pending claims.

I. The Deficiencies Of Schein With Respect To Claim 1

As noted above, the Office Action summarily concludes that Schein discloses all the claim limitations, except “customizing content or wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home.” See February 4, 2009 Office Action at page 2. As an initial point, the Applicants agree that Schein does not describe, teach or suggest “customizing content or wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home.” Notwithstanding, according to the statement above, the Office Action seemingly stands for the proposition that Schein does disclose, among other limitations, a “user defined media

channel.” However, Schein fails to describe, teach or suggest this limitation, as well as others, recited in the pending claims.

Claim 1 recites, in part, “a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user.” Thus, the claim is clear that a user defined media channel, not merely a schedule or listing of information from other channels, is created.

On the other hand, Schein relates to “systems and methods for allowing [a] viewer to retrieve, initiate a subscription to, search, select and interact with television schedule and/or listing information located in a remote database, computer network or on-line service....” See Schein at column 1, lines 15-22. In short, Schein discloses a system and method that allows a viewer to customize a program guide so that the particular viewer will not miss programs from various channels that he/she wants to view.

In particular, Schein discloses that a “program guide will usually include a schedule and/or listing information area that depicts the programs that are available from a directory, library or archival source or being presented **on each channel** at each time during the day, week or month.” See *id.* at column 2, lines 38-42. **In Schein, the viewer does not create any channel.** Rather, the viewer customizes a program guide by indicating which programs **from other channels** he/she wants to view in the future. See *id.* at column 8, lines 60-63 (“The television schedule guide in FIG. 2 has been customized by a user such that only channels 2, 3, 4, 5, 7, HBO, SHO and PBS are included in the displayed guide”). The viewer in Schein does not create any of channels 2, 3, 4, 5, 7, HBO, SHO and PBS, nor any hybrid that includes portions of those channels. Rather, Schein discloses that a user may **customize a schedule guide** to include only those broadcast channels he/she prefers. See *id.* at column 9, line 67 to column 10, line 3 (“the user can have certain channels eliminated from the displayed television schedule guide, or the user can select a particular order for each of the television channels within the guide”). Schein also discloses that when a particular desired program is broadcast on a particular channel, the system may automatically tune to that channel (which, again, is not created by the user). See *id.* at column 6, lines 4-8 (“a user can sort, mix, and do a customized line-up of **channels** within the television schedule guide displayed on computer screen 50. In addition, the user can automatically tune to a desired program or can select different programs for automatic recording and/or retrieval and digital storage”).

Contrary to the summary conclusion in the Final Office Action, Schein does not describe, teach or suggest, however, that a viewer creates his/her own media channel. That is, Schein does not describe, teach or suggest “a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user,” as recited in claim 1, for example. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claim 1 and the claims that depend therefrom.

II. The Deficiencies Of Schein With Respect To Claim 12

For at least the reasons discussed above, Schein also does not describe, teach or suggest “a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one **user defined media channel**, wherein the at least one user selects media content for the at least one **user defined media channel** through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will

be made available on the at least one **user defined media channel**, the user interface displaying a graphical representation of the at least one **user defined media channel**, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user, wherein the at least one **user defined media channel** is pushed from the first home to the second home,” as recited in claim 12. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claim 12 and the claims that depend therefrom.

III. The Deficiencies Of Schein With Respect To Claim 23

For at least the reasons discussed above, Schein also does not describe, teach or suggest “a user interface for the selection and display of media content, the user interface allowing at least one user to create at least one **user defined media channel**, wherein the at least one user selects media content for the at least **one user defined media channel** through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available via the at least one **user defined media channel**, the user interface displaying a graphical representation of the at least **one user defined media channel** comprising a sequence of the user selected media content for consumption at the times specified by the at least one user, wherein the at least one **user defined media channel** is pushed from the first home to the second home,” as recited in claim 23. Thus, for at least these

reasons, the Applicants respectfully request reconsideration of the rejection of claim 23 and the claims that depend therefrom.

IV. The Deficiencies Of Schein With Respect To Claim 29

For at least the reasons discussed above, Schein also does not describe, teach or suggest “at least one processor operably coupled to the at least one interface and to storage containing executable code enabling creation by a first user at the first location of one or more media channels for distribution to an authorized second user at a second location remote from the first location, wherein the one or more media channels comprises media content selected by the first user and arranged according to times specified by the first user; and wherein each of the one or more media channels comprises a sequence of media content selected by the first user, which is made available for consumption by the second user of the media exchange network at times scheduled by the first user, wherein the one or more media channels are pushed by the first user at the first location to the second user at the second location,” as recited in claim 29. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claim 29 and the claims that depend therefrom.

V. The Deficiencies Of Schein With Respect To Claim 40

Claim 40 recites “a user interface for the selection and display of media content, the user interface allowing **at least one user to create at least one user defined media channel**, wherein the at least one user selects media content for the **at least one user defined media channel** through the user interface, and the at least one user

specifies, through the user interface, times when the user selected media content will be made available via the **at least one user defined media channel**, the user interface displaying a graphical representation of the **at least one user defined media channel** comprising a sequence of the user selected media content for consumption at the times specified by the at least one user.” As discussed above, Schein does not describe, teach or suggest a media channel created by a user. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claim 40 and the claims that depend therefrom.

VI. The Deficiencies Of Schein With Respect To Claim 46

Claim 46 recites, in part, “server software that receives via a communication network a request for the delivery of the media content from the at least one server at the first location, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from the at least one server at the first location to a storage at a second location to a television display at a third location for consumption.” Contrary to the assertion in the Office Action, there is nothing in Schein (or the Future of TV, for that matter) that describes, teaches or suggests server software that coordinates delivery of media content from a server at a first location to a storage at a second location and then onto a television at a third location. Further, because the Office Action rejects this claim, as well as the remaining claims, based on a broad, summary statement (see portion of Final Office Action reproduced above), the Applicants are not even sure as to which portion of Schein the

Office Action relies on to disclose these limitations. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claim 46 and the claims that depend therefrom.

VI. The Future Of TV Does Not Cure The Deficiencies Of Schein

The Office Action relies on The Future of TV as filling in the gaps of Schein. For example, the Office Action states that “Schein does not specifically disclose customizing content or wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home.”⁸¹ See February 4, 2009 Office Action at page 2. In short, the Office Action seemingly relies on The Future of TV as disclosing “wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home,” as recited in claim 1. As explained below, however, The Future of TV does not describe, teach or suggest pushing a user defined media channel from a first location to other locations that are separate and distinct from the first location.

As an initial matter, The Future of TV, as the name implies, is forward-looking and does not describe, teach or suggest technology as it existed at the time the article was written.

Additionally, while The Future of TV predicts the future existence of a system that “will let you receive the digital entertainment, interact with it and display it on any

⁸¹ The Office Action summarily concludes that Schein discloses all of the other recited claim limitations. See February 4, 2009 Office Action at page 2.

screen” (see The Future of TV at page 36), the article does not describe, teach or suggest pushing a **user defined media channel from** a first location **to** other locations that are separate and distinct from the first location. The Future of TV hypothesizes about the existence of a digital video recorder that is able to “search a large electronic program guide maintained by TiVo or Replay and then download all sorts of shows from all sorts of broadcasters.” See *id.* at page 36. The Future of TV discusses the possibility, but not reality (as of the date it was published), of a DVR that is able to download broadcasts and allow the person who downloaded them to play them whenever he/she wished. Much like Schein, however, The Future of TV does not describe, teach or suggest “wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home,” as recited in claim 1, “wherein the at least one user defined media channel is pushed from the first home to the second home,” as recited in claim 12, “wherein the at least one user defined media channel is pushed from the first home to the second home,” as recited in claim 23, or “wherein the one or more media channels are pushed by the first user at the first location to the second user at the second location,” as recited in claim 29. Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claims 1, 12, 23, 29 and the claims that depend therefrom.

VII. The Future Of TV Is Not Enabling Prior Art

As stated in the MPEP, a “reference contains an ‘enabling disclosure’ if the public was in possession of the claimed invention before the date of invention.” See MPEP at 2121.01. See also *In re Donohue*, 766 F.2d 531, 226 USP 619 (Fed. Cir. 1985). As the name clearly implies, however, The Future of TV does not describe technology as it existed at the time the article was published.

In order for a reference to provide an enabling disclosure, it must “describe[] the claimed invention in sufficient detail to enable a person of ordinary skill in the art to carry out the claimed invention....” See MPEP at 2121(III). In particular, the disclosure “must provide an enabling disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient....” See MPEP at 2121.01. However, as shown below, The Future of TV simply does not describe a system in sufficient detail to enable a person of ordinary skill in the art to carry it out. Instead, it merely lists potential applications of the future of TV.

First, The Future of TV states that the “FUTURE OF TELEVISION IS JUST AROUND THE CORNER.” See The Future of TV at page 35. Because it is “just around the corner,” it clearly did not exist at the time the article was published. Indeed, the “pieces just have to be improved and linked together in the right way. **Connecting the chain will be no small feat.**” See *id.* at page 35 (emphasis added). Clearly, The Future of TV discloses a potential system that did not exist at the time the article was first published in November, 2001.

What's missing is a commercial platform – a box in your home containing electronics and software that will let you receive the digital entertainment, interact with it and display it on any screen. Your TV, even a digital one, isn't powerful enough, and neither are the set-top converter boxes that receive signals from cable or satellite providers.

See *id.* at page 36. The public simply was not in possession of this technology at the time *The Future of TV* was published. Indeed, the article unambiguously notes “what’s missing.” See *id.* “[W]e still won’t have custom TV until companies find the best model for integrating digital content, distribution and the platform.” See *id.* at page 38. The *Future of TV* indicates that “custom TV” was not reality at the time the article was published. See *id.* at page 40 (“THE LAST 12 FEET”).

The *Future of TV*, as the name implies, does not describe technology as it existed at the time the article was published. Instead, it discusses possibilities, but not necessarily reality, on the future horizon. For at least these reasons, *The Future of TV* does not describe a system of which the public was in possession at the time the article was published. Consequently, *The Future of TV* is not an enabling disclosure. See MPEP at 2121.01. For at least these reasons, the Applicants respectfully submit that *The Future of TV* cannot be combined with *Schein* to reject any of the pending claims.

VIII. CONCLUSION

For at least the reasons discussed above, the Applicants respectfully submit that the pending claims are allowable in all respects. Therefore, the Board is respectfully requested to reverse the rejections of pending claims 1-53.

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V. PAYMENT OF FEES

The Commissioner is authorized to charge any necessary fees, including the \$540 fee for this Appeal Brief and any other necessary fees, or credit overpayment to Deposit Account 13-0017.

Respectfully submitted,

Dated: May 7, 2009

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CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. A system providing billing support for the exchange of media, the system comprising:

a first television display in a first home of a first user;

a first storage in the first home, the first storage supporting media consumption by the first television display in the first home, and having a first network protocol address;

a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user, wherein the at least one user defined media channel is pushed from the first home to other authorized users at locations that are separate and distinct from the first home;

at least one server storing the media content, and having a second network protocol address; and

server software that receives from the first home via a communication network a request for the delivery of media content, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from the at least one server at the second network protocol address to the first storage at the first network protocol address for consumption by the first television display.

2. The system of claim 1 wherein the media content comprises one or more of audio, a still image, video, and/or data.

3. The system of claim 1 wherein the first and second network protocol addresses are one of an Internet protocol (IP) address, a media access control (MAC) address, or an electronic serial number (ESN).

4. The system of claim 1 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

5. The system of claim 4 wherein the communication network is the Internet.

6. The system of claim 1 wherein consumption comprises one or more of playing digitized audio, displaying a still image, displaying video, and/or displaying data.

7. The system of claim 1 wherein the information securing payment for delivery comprises one or more of a device ID, a public key for encryption, information related to services, information regarding payment terms, information regarding billing, and/or media push/access restrictions and limitations.

8. The system of claim 1 wherein the information securing payment for delivery is received via the communication network from a second user at a second home.

9. The system of claim 1 further comprising:

at least one media peripheral communicatively coupled to the first storage;

the at least one media peripheral providing at least a portion of the information securing payment for delivery; and

the media content being delivered to the at least one media peripheral.

10. The system of claim 9 wherein the at least one media peripheral comprises one or more of a digital camera, a digital camcorder, a television, a personal computer, a CD player, a home juke-box, a multi-media gateway device, a multi-media personal digital assistant, a DVD player, a tape player, and/or a MP3 player.

11. The system of claim 1 wherein the identity of a user receiving media content is unknown to the at least one server.

12. A system providing billing support for the exchange of media, the system comprising:

a first storage in the first home, the first storage supporting media consumption, and having an associated first protocol address;

a second television display in a second home, and having an associated second protocol address;

a user interface for the selection and display of media content, at the first home, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available on the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel, the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user, wherein the at least one user defined media channel is pushed from the first home to the second home;

at least one server storing the media content; and

server software that receives from the first home at the associated first protocol address, via a communication network, a request for the delivery of the media content,

the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from one or both of the first storage and/or the at least one server to the second television display at the associated second protocol address for consumption.

13. The system of claim 12 wherein the media content comprises one or more of audio, a still image, video, and/or data.

14. The system of claim 12 wherein the first and second protocol addresses are one of an Internet protocol (IP) address, a media access control (MAC) address, or an electronic serial number (ESN).

15. The system of claim 12 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

16. The system of claim 15 wherein the communication network is the Internet.

17. The system of claim 12 wherein the at least one server comprises one or more of a 3rd party service provider, a media storage server, and/or a broadband head end.

18. The system of claim 12 wherein the identity of a user receiving media content is unknown to the at least one server.

19. The system of claim 12 wherein the information securing payment for delivery comprises one or more of a device ID, a public key for encryption, information related to services, information regarding payment terms, information regarding billing, and/or media push/access restrictions and limitations.

20. The system of claim 12 further comprising:

at least one media peripheral communicatively coupled to the set top box circuitry; and

the at least one media peripheral providing the media content.

21. The system of claim 20 wherein the at least one media peripheral comprises one or more of a digital camera, a digital camcorder, a television, a personal computer, a CD player, a home juke-box, a multi-media gateway device, a multi-media personal digital assistant, a DVD player, a tape player, and/or a MP3 player.

22. The system of claim 12 wherein one or both of billing and/or payment is secured before delivery of the media content occurs.

23. A system providing billing support for the exchange of media, the system comprising:

a first storage in the first home;

a second television display in a second home;

a user interface for the selection and display of media content, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available via the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user, wherein the at least one user defined media channel is pushed from the first home to the second home;

at least one server storing the media content; and

server software that receives a request for the delivery of the media content, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the media content from one of the first storage and the at least one server to the second television display for consumption.

24. The system of claim 23 wherein the media content comprises one or more of audio, a still image, video, and/or data.

25. The system of claim 23 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

26. The system of claim 23 wherein the identity of a user receiving media content is unknown to the at least one server.

27. The system of claim 23 further comprising:

at least one media peripheral communicatively coupled to the first storage; and

the at least one media peripheral acting as one of a source or a destination for the media content.

28. The system of claim 27 wherein the at least one media peripheral comprises one or more of a digital camera, a digital camcorder, a television, a personal computer, a CD player, a home juke-box, a multi-media gateway device, a multi-media personal digital assistant, a DVD player, a tape player, and/or a MP3 player.

29. One or more circuits for use in a communication terminal at a first location in a media exchange network, the one or more circuits comprising:

at least one interface for communicating via a broadband communication infrastructure;

at least one processor operably coupled to the at least one interface and to storage containing executable code enabling creation by a first user at the first location of one or more media channels for distribution to an authorized second user at a second location remote from the first location, wherein the one or more media channels comprises media content selected by the first user and arranged according to times specified by the first user; and

wherein each of the one or more media channels comprises a sequence of media content selected by the first user, which is made available for consumption by the second user of the media exchange network at times scheduled by the first user, wherein the one or more media channels are pushed by the first user at the first location to the second user at the second location.

30. The one or more circuits of claim 29, wherein the broadband communication infrastructure comprises a cable network.

31. The one or more circuits of claim 29, wherein the broadband communication infrastructure comprises a digital subscriber line (DSL) network.

32. The one or more circuits of claim 29, wherein the media content of a media channel is stored at the first location.

33. The one or more circuits of claim 29, wherein at least a portion of the media content of a media channel is provided by a third party source remote from the first and second user locations.

34. The one or more circuits of claim 29, wherein the media exchange network comprises a media exchange server that associates authorized users as members of a personal network.

35. The one or more circuits of claim 34, wherein the media exchange server is located within the communication terminal of the first user.

36. The one or more circuits of claim 29, wherein media content comprises one or more of digitized video, digitized audio and one or more digitized still images.

37. The one or more circuits of claim 29, wherein a first user is enabled to anonymously request delivery of media content from a third party to the second user.

38. The one or more circuits of claim 29, wherein the sequence of media content selected by the first user is received by and stored at the location of the second user prior to the time of availability scheduled by the first user, for consumption at the time of availability scheduled by the first user.

39. The one or more circuits of claim 29, wherein the sequence of media content selected by the first user is pushed to the communications terminal of the second user.

40. A system comprising:

a user interface for the selection and display of media content, the user interface allowing at least one user to create at least one user defined media channel, wherein the at least one user selects media content for the at least one user defined media channel through the user interface, and the at least one user specifies, through the user interface, times when the user selected media content will be made available via the at least one user defined media channel, the user interface displaying a graphical representation of the at least one user defined media channel comprising a sequence of the user selected media content for consumption at the times specified by the at least one user.

41. The system of claim 40, further comprising at least one server storing the media content.

42. The system of claim 42, further comprising server software that receives a request for the delivery of the media content, the request comprising information securing payment for delivery, and that responds by coordinating the delivery of the

media content from a storage or the at least one server to a television display for consumption.

43. The system of claim 40 wherein the media content comprises one or more of audio, a still image, video, and/or data.

44. The system of claim 42 further comprising:

at least one media peripheral communicatively coupled to the storage; and

the at least one media peripheral acting as one of a source or a destination for the media content.

45. The system of claim 44 wherein the at least one media peripheral comprises one or more of a digital camera, a digital camcorder, a television, a personal computer, a CD player, a home juke-box, a multi-media gateway device, a multi-media personal digital assistant, a DVD player, a tape player, and/or a MP3 player.

46. A system comprising:

at least one server at a first location, the at least one server configured to store media content; and

server software that receives via a communication network a request for the delivery of the media content from the at least one server at the first location, the request comprising information securing payment for delivery, and that responds by

coordinating the delivery of the media content from the at least one server at the first location to a storage at a second location to a television display at a third location for consumption.

47. The system of claim 46 wherein the media content comprises one or more of audio, a still image, video, and/or data.

48. The system of claim 46 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

49. The system of claim 46 wherein the communication network is the Internet.

50. The system of claim 46 wherein the at least one server comprises one or more of a 3rd party service provider, a media storage server, and/or a broadband head end.

51. The system of claim 46 wherein an identity of a user receiving media content is unknown to the at least one server.

52. The system of claim 46 wherein the information securing payment for delivery comprises one or more of a device ID, a public key for encryption, information

related to services, information regarding payment terms, information regarding billing, and/or media push/access restrictions and limitations.

53. The system of claim 46 wherein one or both of billing and/or payment is secured before delivery of the media content occurs.

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EVIDENCE APPENDIX
(37 C.F.R. § 41.37(c)(1)(ix))

- (1) United States Patent No. 6,388,714 ("Schein"), entered into record by Examiner in October 7, 2008 Office Action.
- (2) "The Future of TV" (November 2001), entered into record by Examiner in February 4, 2009 Office Action.

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RELATED PROCEEDINGS APPENDIX
(37 C.F.R. § 41.37(c)(1)(x))

Not applicable.